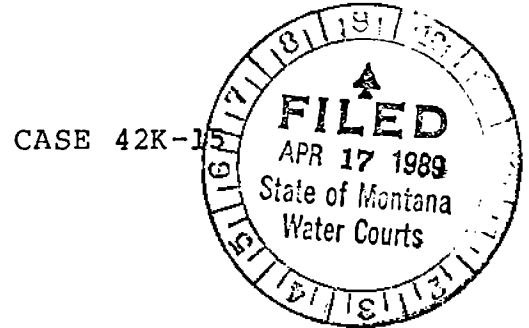


IN THE WATER COURTS OF THE STATE OF MONTANA
 YELLOWSTONE DIVISION
 YELLOWSTONE RIVER BETWEEN THE TONGUE & POWDER RIVER BASIN (42K)
 * * * * *

IN THE MATTER OF THE ADJUDICATION OF)
 THE EXISTING RIGHTS TO THE USE OF ALL)
 THE WATER, BOTH SURFACE AND UNDERGROUND,)
 WITHIN THE YELLOWSTONE RIVER BETWEEN)
 THE TONGUE AND POWDER RIVERS DRAINAGE)
 AREA, INCLUDING ALL TRIBUTARIES OF THE)
 YELLOWSTONE RIVER BETWEEN THE TONGUE)
 AND POWDER RIVERS IN ROSEBUD, CUSTER,)
 GARFIELD AND PRAIRIE COUNTIES, MONTANA.)



CLAIMANT: United States of America, (Bureau of Land Management)
 OBJECTOR: United States of America, (Bureau of Land Management)

MASTER'S REPORT

FINDINGS OF FACT

1. The 219 water right claims consolidated into case 42K-15 were decreed to the United States of America Department of the Interior, Bureau of Land Management, in the preliminary decree of the Yellowstone River between the Tongue and Powder Rivers, Basin 42K. The water right numbers are listed in the table under conclusion of law IV, infra. These claims were filed either for stockwater or for "wildlife use (consumptive and non-consumptive), riparian vegetation maintenance, water supply maintenance during drought periods, and evaporation and seepage losses."

2. On March 14, 1986 the United States filed objections to each of these claims. The United States objects because specifically claimed volume and flow rates were deleted from these claims and states that "the preliminary decree merely recognizes a unit rate of consumption for stock and apparently

did not recognize the claim to the storage volume for wildlife consumption and habitat." The United States requests that the preliminary decree be amended to reflect the specific quantities claimed.

3. The United States also objected to certain claims on bases other than flow rate and volume. The claims receiving additional objections and the nature of those objections are listed below:

<u>Claim Number</u>	<u>Basis of Objection</u>
42K-W-079834	Priority Date
42K-W-079835	Priority Date
42K-W-079906	Source
42K-W-079939	Place of Use
42K-W-079940	Place of Use
42K-W-079941	Priority Date
42K-W-079942	Priority Date
42K-W-079943	Priority Date
42K-W-079944	Priority Date
42K-W-079945	Priority Date
42K-W-079946	Priority Date
42K-W-079947	Point of Diversion, Place of Use
42K-W-079948	Point of Diversion, Place of Use

4. On September 9, 1989, the United States filed a copy of a Declaration of Vested Groundwater Rights to substantiate its objection to claims 42K-W-079834 and 42K-W-079835. This declaration, filed by the Bonine Ranch on December 31, 1963, states that beneficial use of water from the well claimed under these rights commenced on September 10, 1951.

5. The United States' objection to claim 42K-W-079906 based on an incorrect source name states that the correct source is Mack Creek. During examination of this claim, the Department of Natural Resources and Conservation (DNRC) changed the source name from UT Mack Creek to Mack Creek.

6. On September 9, 1988, the United States filed a map outlining the place of use for claims 42K-W-079939 and 42K-W-079940. The reservoir claimed under these rights is located, in part, on federal land in the NESE and SENE of Section 31, T12N, R49E.

7. The United States filed a Bureau of Land Management Project Completion Report and Range Improvement Application and Permit in support of its claimed March 13, 1966, priority date for claims 42K-W-079941 and 42K-W-079942.

8. The United States filed a copy of a Notice of Completion of Groundwater Appropriation by means of well to substantiate its priority date objection to claims 42K-W-079943 and 42K-W-079944. This notice, which was originally filed with the Prairie County Clerk and Recorder, states that the well claimed under these rights was completed on November 22, 1966.

9. The United States filed a copy of a Declaration of Vested Groundwater Rights to substantiate its priority date objections to claims 42K-W-079945 and 42K-W-079946. This declaration originally filed with the Prairie County Clerk and Recorder, states that beneficial use of the water from the well claimed under these rights commenced on September 1, 1961.

10. On January 3, 1989, the United States filed an affidavit by Dex A. Hight, BLM hydrologist, establishing the correct location of the spring source for claims 42K-W-079947 and 42K-W-079948. This spring is located in the NENSW Section 22, T13N, R47E, Prairie County.

11. On March 31, 1989, the United States filed an

affidavit by Frances S. Rieman concerning claim 42K-W-079920 stating that the claimed volume of 16.39 acre feet per year is incorrect and the volume used for the claimed purposes is 255.39 acre feet per year. The affiant also states that there is a point of diversion from Custer Creek at NESWNE, Sec. 22, T11N, R49E in addition to the claimed points of diversion.

12. No other persons have filed objections to these claims.

13. No person has filed a notice of intent to appear concerning the objections filed by the United States.

CONCLUSIONS OF LAW

I.

The Water Court has jurisdiction to consider objections to preliminary decrees pursuant to MCA Sec. 85-2-233.

II.

A decree of a specific flow rate and volume for a surface stockwater or wildlife use which reflects the right's historic beneficial use is not inconsistent with MCA Title 85, Chapter 2. With respect to certain stockwater rights, including rights taken from a spring, stream or reservoir, the Water Court's policy in Basin 42K was to not specify a flow rate and to decree a volume of 30 gallons per day per animal unit. These rights, however, may be more specifically quantified on a case-by-case basis. The Water Court has authorized similar changes to Bureau of Land Management claims in other basins. See e.g., Basin 40L.

III.

There is no evidence before the Water Court to contradict the United States' assertion that the specific flow rate and volume figures claimed reflect the historic beneficial use of the rights. A statement of claim of an existing water right constitutes prima facie proof of its content. MCA Sec. 85-2-227.

IV.

The abstracts of the following water right claims, as shown in the preliminary decree of the Yellowstone River between the Tongue and Powder Rivers, should be changed to reflect the corresponding flow rates and volumes:

<u>Water Right No.</u>	<u>Purpose of Right*</u>	<u>Flow Rate</u>	<u>Volume (Acre Feet Per Year)</u>
42K-W-079788	WI	10.00 gpm	15.63
42K-W-079789	ST	10.00 gpm	0.50
42K-W-079790	WI	Runoff	0.07
42K-W-079791	ST	Runoff	0.50
42K-W-079792	WI	5.0 gpm	7.56
42K-W-079793	ST	5.0 gpm	0.50
42K-W-079794	WI	Runoff	3.50
42K-W-079795	ST	Runoff	0.50
42K-W-079796	WI	10.0 gpm	15.63
42K-W-079797	ST	10.0 gpm	0.50
42K-W-079798	WI	Runoff	2.50
42K-W-079799	ST	Runoff	0.50
42K-W-079800	ST	Runoff	0.79
42K-W-079801	WI	Runoff	3.41
42K-W-079802	WI	Runoff	9.21
42K-W-079803	ST	Runoff	0.79
42K-W-079804	WI	Runoff	27.70
42K-W-079805	ST	Runoff	0.50
42K-W-079806	WI	Runoff	377.50
42K-W-079807	ST	Runoff	0.50
42K-W-079808	WI	Runoff	2.21
42K-W-079809	ST	Runoff	0.79
42K-W-079810	WI	Runoff	6.41
42K-W-079811	ST	Runoff	0.79
42K-W-079812	ST	Runoff	0.79

42K-W-079813	WI	Runoff	9.31
42K-W-079814	WI	8.0 gpm	12.11
42K-W-079815	ST	8.0 gpm	0.79
42K-W-079816	ST	Runoff	0.92
42K-W-079817	WI	Runoff	0.58
42K-W-079818	ST	Runoff	0.62
42K-W-079819	WI	Runoff	2.38
42K-W-079820	WI	Runoff	3.11
42K-W-079821	WI	2.0 gpm	2.61
42K-W-079822	ST	Runoff	0.69
42K-W-079823	ST	2.0 gpm	0.62
42K-W-079824	WI	Runoff	37.78
42K-W-079825	ST	Runoff	0.62
42K-W-079826	WI	Runoff	9.38
42K-W-079827	ST	Runoff	0.62
42K-W-079828	ST	Runoff	0.62
42K-W-079829	WI	Runoff	6.38
42K-W-079830	WI	5.0 gpm	7.44
42K-W-079831	ST	5.0 gpm	0.62
42K-W-079834	WI	3.0 gpm	4.22
42K-W-079835	ST	3.0 gpm	0.62
42K-W-079836	WI	Runoff	1.38
42K-W-079837	ST	Runoff	0.62
42K-W-079838	WI	Runoff	9.50
42K-W-079839	ST	Runoff	0.50
42K-W-079840	WI	Runoff	11.38
42K-W-079841	ST	Runoff	0.62
42K-W-079842	WI	Runoff	2.88
42K-W-079843	ST	Runoff	0.62
42K-W-079844	ST	Runoff	0.62
42K-W-079845	WI	Runoff	8.88
42K-W-079846	WI	Runoff	1.50
42K-W-079847	ST	Runoff	0.50
42K-W-079848	ST	6.0 gpm	0.50
42K-W-079849	WI	6.0 gpm	9.18
42K-W-079850	ST	Runoff	0.50
42K-W-079851	WI	Runoff	1.50
42K-W-079852	WI	Runoff	4.50
42K-W-079853	ST	Runoff	0.50
42K-W-079854	ST	Runoff	0.69
42K-W-079855	WI	Runoff	33.31
42K-W-079856	ST	Runoff	0.69
42K-W-079857	WI	Runoff	0.81
42K-W-079858	WI	Runoff	0.31
42K-W-079859	ST	Runoff	0.69
42K-W-079860	WI	Runoff	0.31
42K-W-079861	ST	Runoff	0.69
42K-W-079862	WI	1.0 gpm	0.82
42K-W-079863	ST	1.0 gpm	0.79
42K-W-079864	WI	Runoff	43.01
42K-W-079865	ST	Runoff	0.79
42K-W-079866	WI	Runoff	7.21
42K-W-079867	ST	Runoff	0.79
42K-W-079868	WI	Runoff	3.21

42K-W-079869	ST	Runoff	0.79
42K-W-079870	WI	Runoff	4.01
42K-W-079871	ST	Runoff	0.79
42K-W-079872	ST	Runoff	0.79
42K-W-079873	WI	Runoff	5.81
42K-W-079874	ST	Runoff	0.79
42K-W-079875	WI	Runoff	1.01
42K-W-079876	WI	Runoff	5.50
42K-W-079877	ST	Runoff	0.50
42K-W-079878	ST	Runoff	0.50
42K-W-079879	WI	Runoff	9.50
42K-W-079880	WI	Runoff	12.70
42K-W-079881	ST	Runoff	0.50
42K-W-079882	WI	Runoff	2.21
42K-W-079883	ST	Runoff	0.79
42K-W-079890	WI	Runoff	14.21
42K-W-079891	ST	Runoff	0.79
42K-W-079892	ST	Runoff	0.79
42K-W-079893	WI	Runoff	17.81
42K-W-079894	ST	Runoff	0.62
42K-W-079895	WI	Runoff	0.38
42K-W-079896	ST	5.0 gpm	0.62
42K-W-079897	WI	5.0 gpm	7.43
42K-W-079898	ST	Runoff	0.93
42K-W-079899	WI	Runoff	19.07
42K-W-079900	WI	Runoff	40.12
42K-W-079901	ST	Runoff	0.62
42K-W-079902	WI	1.0 gpm	0.97
42K-W-079903	ST	1.0 gpm	0.62
42K-W-079906	WI	Runoff	9.38
42K-W-079907	ST	Runoff	0.62
42K-W-079908	ST	Runoff	0.62
42K-W-079909	WI	Runoff	6.38
42K-W-079910	WI	Runoff	5.50
42K-W-079911	ST	Runoff	0.50
42K-W-079912	ST	Runoff	0.92
42K-W-079913	WI	Runoff	12.28
42K-W-079914	WI	Runoff	4.07
42K-W-079915	ST	Runoff	0.93
42K-W-079916	WI	Runoff	2.50
42K-W-079917	ST	Runoff	0.50
42K-W-079920	WI	Runoff	255.39
42K-W-079921	ST	Runoff	0.50
42K-W-079922	WI	3.0 gpm	3.85
42K-W-079923	ST	3.0 gpm	0.93
42K-W-079924	ST	Runoff	0.92
42K-W-079925	WI	Runoff	3.88
42K-W-079926	WI	3.0 gpm	3.85
42K-W-079927	ST	3.0 gpm	0.93
42K-W-079929	WI	Runoff	8.08
42K-W-079930	ST	Runoff	0.92
42K-W-079931	ST	1.0 gpm	0.62
42K-W-079932	WI	1.0 gpm	0.99
42K-W-079935	ST	Runoff	0.50

42K-W-079936	WI	Runoff	3.50
42K-W-079937	WI	Runoff	26.68
42K-W-079938	ST	Runoff	0.50
42K-W-079939	WI	Runoff	14.50
42K-W-079940	ST	Runoff	0.50
42K-W-079941	ST	15.0 gpm	0.79
42K-W-079942	WI	15.0 gpm	23.42
42K-W-079943	WI	8.0 gpm	12.11
42K-W-079944	ST	8.0 gpm	0.79
42K-W-079945	ST	5.0 gpm	0.79
42K-W-079946	WI	5.0 gpm	7.27
42K-W-079947	WI	1.0 gpm	0.80
42K-W-079948	ST	1.0 gpm	0.79
42K-W-079949	ST	Runoff	0.79
42K-W-079950	WI	Runoff	9.21
42K-W-079951	ST	Runoff	0.79
42K-W-079952	WI	Runoff	6.21
42K-W-079955	WI	Runoff	39.71
42K-W-079956	ST	Runoff	0.79
42K-W-079959	WI	Runoff	17.81
42K-W-079960	ST	Runoff	0.79
42K-W-079961	WI	3.0 gpm	3.99
42K-W-079962	ST	3.0 gpm	0.79
42K-W-079963	WI	Runoff	2.21
42K-W-079964	ST	Runoff	0.79
42K-W-079965	WI	Runoff	5.61
42K-W-079966	ST	Runoff	0.79
42K-W-079967	ST	Runoff	0.79
42K-W-079968	WI	Runoff	9.81
42K-W-079969	WI	Runoff	124.01
42K-W-079970	ST	Runoff	0.79
42K-W-079972	WI	Runoff	10.61
42K-W-079973	WI	Runoff	6.21
42K-W-079974	ST	Runoff	0.79
42K-W-079975	ST	Runoff	0.79
42K-W-079976	WI	Runoff	23.81
42K-W-079977	WI	Runoff	16.01
42K-W-079978	ST	Runoff	0.79
42K-W-079979	ST	Runoff	0.79
42K-W-079980	WI	Runoff	2.21
42K-W-079981	WI	Runoff	16.21
42K-W-079982	ST	Runoff	0.79
42K-W-079983	ST	Runoff	0.79
42K-W-079985	WI	Runoff	22.61
42K-W-079986	WI	Runoff	2.21
42K-W-079987	ST	Runoff	0.79
42K-W-079988	WI	Runoff	38.81
42K-W-079989	WI	Runoff	10.21
42K-W-079990	ST	Runoff	0.79
42K-W-079991	ST	Runoff	0.79
42K-W-079992	WI	Runoff	14.21
42K-W-079993	ST	Runoff	0.79
42K-W-079994	WI	Runoff	6.61
42K-W-079995	WI	Runoff	2.21

42K-W-079996	ST	Runoff	0.79
42K-W-079997	WI	Runoff	2.21
42K-W-079998	ST	Runoff	0.79
42K-W-079999	ST	Runoff	0.79
42K-W-080000	WI	Runoff	4.21
42K-W-080001	WI	Runoff	85.41
42K-W-080002	WI	Runoff	5.21
42K-W-080003	ST	Runoff	0.79
42K-W-080004	ST	Runoff	0.79
42K-W-080005	ST	Runoff	0.79
42K-W-080006	WI	Runoff	77.21
42K-W-080007	WI	Runoff	3.21
42K-W-080008	ST	Runoff	0.79
42K-W-080009	ST	Runoff	0.40
42K-W-080010	WI	Runoff	9.60
42K-W-080125	ST	Runoff	0.79
42K-W-080126	WI	Runoff	10.61
42K-W-080143	ST	Runoff	0.79
42K-W-080144	WI	Runoff	5.21
42K-W-080145	WI	Runoff	9.21
42K-W-080146	ST	Runoff	0.79
42K-W-080213	ST	Runoff	0.40
42K-W-080214	WI	Runoff	3.60
42K-W-080251	WI	Runoff	3.11
42K-W-080252	ST	Runoff	0.39
42K-W-080427	WI	Runoff	4.50
42K-W-080428	ST	Runoff	0.50
42K-W-081033	ST	Runoff	0.50
42K-W-081034	WI	Runoff	3.50
42K-W-081106	WI	Runoff	12.21
42K-W-081107	ST	Runoff	0.79

* ST denotes stockwater, WI denotes wildlife.

V.

The following change should be made to the abstracts of claims 42K-W-079834 and 079835 as they appear in the preliminary decree for Basin 42K:

PRIORITY DATE: September 10, 1951.

VI.

The abstract of claim 42K-W-079906 should state that Mack Creek is the source of water under this right.

VII.

The following change should be made to the abstracts of claims 42K-W-079939 and 079940 as they appear in the preliminary decree for Basin 42K:

PLACE OF USE: NESE Section 31, T12N, R49E
SENE Section 31, T12N, R49E

VIII.

The priority date for claims 42K-W-079941 and 42K-W-079942 should be March 13, 1966. For the purposes of this general adjudication, the Water Court has held that the Bureau's internal documentation of a groundwater appropriation for a beneficial use is sufficient to establish a priority date reflecting the date of the actual appropriation and use. See, e.g., In re adjudication of existing rights within the O'Fallon Creek Drainage Area, Case 42L-2 (Yellowstone Div., Feb. 26, 1985). In the instant case the Bureau of Land Management Project Completion Report and Range Improvement Application establishes that water was first put to beneficial use on March 13, 1966.

IX.

The following changes should be made to the abstract of claims 42K-W-079943 and 079944:

PRIORITY DATE: November 22, 1966.

X.

The following change should be made to the abstract of claims 42K-W-079945 and 079946:

PRIORITY DATE: September 1, 1961.

XI.

The following changes should be made to the abstracts of claims 42K-W-079947 and 079948:

POINT OF DIVERSION: NENWSW Section 22, T13N, R47E, Prairie Co.

PLACE OF USE: NENWSW Section 22, T13N, R47E, Prairie Co.

XII.

An additional point of diversion at NESWNE, Sec. 22, T11N, R49E, Prairie County, should appear on the abstract of claim 42K-W-079920. Water is diverted from Custer Creek at this location by means of a ditch. The following remark should appear on the claim abstract:

REMARK: THE POINT OF DIVERSION AT NESWNE, SEC. 22, IS
ON CUSTER CREEK.

The point of diversion was changed without previous basin-wide notice. Notice of this change should be given to afford interested parties an opportunity to file objections or appear.

DATED this 17th day of April, 1989.

Bill Dockins
Bill Dockins
Water Master

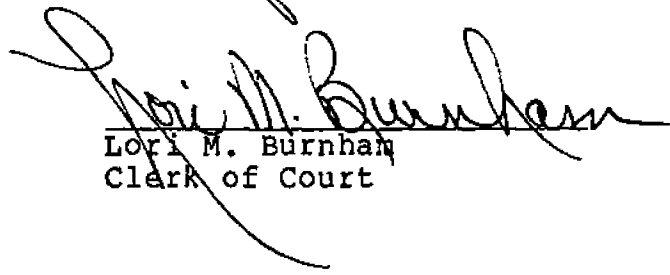
CERTIFICATE OF SERVICE

I, Lori M. Burnham, Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above MASTER'S REPORT was duly served upon the following persons by depositing the same, postage prepaid, in the United States mail:

Bureau of Land Management
P. O. Box 36800
Billings, MT 59107-6800

John R. Hill, Jr.,
Attorney at Law
Department of Justice
1961 Stout St., Drawer 3607
Denver, CO 80294

DATED this 17 day of April, 198 .


Lori M. Burnham
Clerk of Court